Filed 5/8/19 P. v. Knowles CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JAMES ROBERT KNOWLES, Defendant and Appellant.	H045494 (Santa Clara County Super. Ct. No. C1077551)

In 2006, appellant James Robert Knowles was charged with murder. He pleaded not guilty by reason of insanity and was transferred to Napa State Hospital. In 2017, Knowles filed a petition under Penal Code section 1026.2[1] requesting a conditional release to a supervised outpatient program. The trial court denied his petition, and Knowles appealed. Knowles argues that substantial evidence does not support the trial court's determination that he would be a danger to the health and safety of others if released under community supervision and treatment. We disagree and affirm the trial court's order.

BACKGROUND

1. *The Offense and Knowles's Plea*

In 2006, Knowles was charged with one count of murder (§ 187). He pleaded not guilty by reason of insanity and was transferred to Napa State Hospital. In 2017,

[1] Unspecified statutory references are to the Penal Code.

Knowles filed a petition under section 1026.2 requesting that he be conditionally released to a supervised outpatient program.

2. *The Hearing on Knowles's Section 1026.2 Petition*

During the hearing on his petition, Knowles testified on his own behalf. Knowles said he was "[w]holeheartedly" willing to follow the Conditional Release Program's (CONREP) rules and was willing to undergo any treatment recommended by CONREP. He claimed that he would not physically harm others if placed in an outpatient program.

Knowles said that he did not believe he had a mental disorder and did not believe he needed medication. He said that he had only ever been psychotic when he was under the influence of illicit drugs. However, he had lied about being psychotic in the past in order to get certain benefits. He had also told staff at Napa State Hospital that he had faked psychosis in previous hospitalizations when he was "hopelessly homeless." Knowles denied ever being paranoid or delusional while at Napa State Hospital. He had stopped taking psychotropic medication and was not taking psychotropic medication at the time of the hearing. However, Knowles claimed that he would follow the guidelines and supervision requirements set forth by CONREP, including taking any recommended medication, even though he did not believe he had a mental illness.

Knowles denied committing the murder. He said he was led to believe that if he entered a "false plea" he would be released in six months and could "live [his] life." He also believed that both the police and the victim's family were harassing him around the time he committed the crime by using "electronic monitors" that "would send voices."

Knowles admitted he used illicit drugs in the past, but he said he did not believe his drug use made him dangerous. Knowles further admitted he previously used alcohol, but similarly denied that his alcohol abuse made him dangerous. Knowles, however, said he would abstain from illicit drugs and alcohol if required by CONREP. His plan to stay

away from drugs was to walk away, seek the nearest "meeting" as soon as possible, and call a mentor or advisor.

Dr. John Steward was a clinical psychologist at Napa State Hospital and had worked with Knowles. Dr. Steward authored a report in August 2016 evaluating Knowles for the hearing. He also testified at Knowles's hearing. Based on his review of Knowles's record and his conversations with Knowles, Dr. Steward believed that Knowles had a delusional disorder, persecutory type, and was paranoid, guarded, and suspicious. Knowles was originally diagnosed with schizophrenia but that diagnosis had since changed. In part, the diagnosis was changed after Knowles told Dr. Steward that he did not suffer from hallucinations. Dr. Steward, however, opined that Knowles had persistent persecutory delusions where he believed that people were against him.

Dr. Steward believed that Knowles had a mental defect, disease, or disorder that would make him dangerous to the health and safety of others in the community if he were released under supervision. Dr. Steward opined that Knowles's belief that he did not have a paranoid delusional disorder, combined with a decrease in inhibitions from his history of illicit drug use, would result in the decrease of his ability to curb his own behaviors. In other words, Knowles was at a "great risk" of "being violent towards other people because of lower inhibitions from drug use . . . . [a]nd . . . the inability to admit that . . . his beliefs are false."

According to Dr. Steward, Knowles's paranoia had increased since December 2016, when he stopped taking psychotropic medication. Knowles stopped taking medication with psychiatrist approval and cooperation. Knowles, however, never accepted responsibility for committing the murder. He would state the facts of the offense but would end up blaming the victim.

In 2016, when he was still taking psychotropic medication, Knowles acknowledged to Dr. Steward that his mental illness had a role in the murder. At the

time, he also reluctantly agreed that the murder was not committed in self-defense. Since then, Dr. Steward believed that Knowles's level of insight had decreased. Given Knowles's current level of insight, Dr. Steward opined that there was a "greater than 80 percent chance" that Knowles would not abstain from alcohol or marijuana use if released.

Dr. Steward acknowledged that there was no medication that could cure a personality disorder or cause a personality disorder to go into remission. To treat these types of disorders, Napa State Hospital offers group and individual therapy to give patients the opportunity to learn how to manage symptoms. To Dr. Steward's knowledge, Knowles continued to attend these programs even after he stopped taking his medication. Knowles participated in substance abuse treatment while at Napa State Hospital and had previously told Dr. Steward that he would be willing to participate in substance abuse treatment if he was released to the community.

Chastity Piedade, the assistant community program director with CONREP, had assessed Knowles several times at Napa State Hospital. Piedade testified at Knowles's hearing. During her first visit with Knowles in August 2016, Knowles acknowledged that he had a history of substance abuse. He told Piedade that he had not been taking psychotropic medication between 2000 and 2006 despite being hospitalized. Knowles, however, said that he was taking medication for depression but stopped months before he committed the murder. Knowles told Piedade that he had psychotic delusions when he used substances. The delusions that Knowles described were visual and auditory.

Also during the August 2016 meeting, Knowles told Piedade about the 2006 murder. Knowles described that the victim had attacked him first, and he retaliated by stabbing the victim repeatedly. Knowles said that he was under the influence at the time he committed the crime. He also claimed that the victim's family was harassing him using a public address system, pressuring him to come forward about his involvement in

the crime. Knowles, however, told Piedade that if someone "placed their hands on him," he would not respond with deadly force.

Piedade met with Knowles again in January 2017. Piedade described Knowles as more guarded during this second interview. Knowles denied that he had any malingering psychotic symptoms. Piedade asked Knowles about his symptoms of drug-induced psychosis, and Knowles could not identify any examples. Piedade asked Knowles about the murder he had committed, and he said he could not recall the details of the offense and referred her to the police report. Knowles could not identify any risk factors for reoffending and could not identify any potential triggers for relapse or substance abuse. Piedade did not ask Knowles if he had a written relapse prevention plan.

Knowles had not been subjected to a forensic quality review. Piedade described the forensic quality review as an evaluation conducted by an independent panel at Napa State Hospital. Following a patient evaluation, the panel identifies specific action items for the individual to work on.

Knowles's records from Napa State Hospital were admitted into evidence. According to Knowles's records, in May 2017, he became angry when a staff member told him to pick up garbage and put it in the trash can. Afterwards, Knowles approached the nursing station and, in an elevated voice, said, "I don't give a fuck if she [the staff member who had reprimanded Knowles] writes in my chart, I'll fucking write her up, she is fucking stupid." In June 2017, Knowles was overheard speaking to another patient, telling the other patient, "We keep track of everything you are saying, it's being recorded." Also in June 2017, Knowles reported to staff that another patient had kicked him in the shin area. Staff, however, did not observe any bruising or bleeding on Knowles. Dr. Steward testified that the patient that Knowles claimed had kicked him was known to be peaceful.

In addition to Knowles's records from Napa State Hospital, Knowles's past criminal records were also introduced into evidence.

3. *The Trial Court's Decision*

After considering the evidence, the trial court denied Knowles's petition without prejudice to a future renewal. The court observed that Knowles had a "suspiciously convenient lapse of memory" about what should have been a memorable event, "stabbing and hitting a person he didn't know to death—literally to death." The court further determined that Knowles's behavior was not consistent with someone who had come to terms with what he had done, was taking responsibility, and was taking steps to ensure it would never happen again.

The trial court observed that Dr. Steward's testimony was "general in nature," but noted that Dr. Steward concluded that Knowles did not think he had a problem and had an "invalid perception of reality, that would interfere with his ability to make good judgments." The court noted that Knowles's interviews with Piedade demonstrated he was more guarded during the second interview, but if Knowles was making progress one would expect that he would be less guarded during the second interview. The court also noted that Knowles lacked a forensic quality review with a forensic panel.

DISCUSSION

Knowles argues that the trial court erroneously denied his petition for conditional release to a supervised outpatient program. He claims that there was insufficient evidence that he would be a danger to others due to mental defect, disease, or disorder if released.

1. *General Legal Principles and Standard of Review*

A defendant who is found not guilty of a crime by reason of insanity may be released from a state hospital (1) "upon the ground that sanity has been restored" (§ 1026.2, subd. (a)), (2) expiration of the maximum term of commitment, which is the

"longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted" (§ 1026.5, subd. (a)(1)), or (3) approval of outpatient status pursuant to the provisions of section 1600 et seq. (§ 1026.1, subd. (c)). (*People v. Dobson* (2008) 161 Cal.App.4th 1422, 1432 (*Dobson*).) Here, Knowles sought to be released from Napa State Hospital based on a petition for restoration of sanity under section 1026.2, the first listed method. A petition under section 1026.2 may be filed by the defendant, the medical director of the state hospital or treatment facility where the defendant is committed, or the community program director where the person is in outpatient treatment. (§ 1026.2, subd. (a).)

Release under section 1026.2 involves a "two-step process." (*People v. Soiu* (2003) 106 Cal.App.4th 1191, 1196.) The first step requires that the defendant demonstrate at a hearing that he or she will not "be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community." (§ 1026.2, subd. (e).) The defendant has the "burden of proof by a preponderance of the evidence." (§ 1026.2, subd. (k).) The second step, which does not concern us here, often occurs one year after the defendant's placement with a conditional release program and requires that the trial court hold a trial to determine whether the defendant's sanity has been restored. (§ 1026.2, subd. (e).)

A petition seeking conditional release to a supervised outpatient program under section 1026.2 should not be confused with approval of outpatient status pursuant to the provisions of section 1600 et seq. These are two distinct procedures. (See *People v. Sword* (1994) 29 Cal.App.4th 614 (*Sword*).) Under the latter procedure, a defendant *may* be placed on outpatient status if the trial court approves the recommendation of the director of the state hospital or the community program following a hearing. (§ 1603.) A defendant cannot seek outpatient status under section 1600 et seq. by himself or herself. Moreover, " '[o]utpatient status is not a privilege given [to] the [offender] to finish out

his [or her] sentence in a less restricted setting; rather, it is a discretionary form of treatment to be ordered by the committing court only if the medical experts who plan and provide treatment conclude that such treatment would benefit the [offender] and cause no undue hazard to the community.' " (*Sword*, *supra*, at p. 620.) Orders denying outpatient treatment pursuant to section 1600 et seq. are reviewed for an abuse of discretion. (*Sword*, *supra*, at p. 619, fn. 2; *People v. Cross* (2005) 127 Cal.App.4th 63, 66 (*Cross*).)

In contrast to the discretionary procedures outlined under section 1600 et seq., the language of section 1026.2 appears to *mandate* a defendant's release if the trial court determines that he or she "will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community." (§ 1026.2, subd. (e).) Section 1026.2, subdivision (e) states that the trial court "shall" grant a defendant supervised conditional release if this requirement is met. Based on the statutory language, Knowles argues that a trial court has no discretion to deny release to a defendant who has met his or her burden to demonstrate that he or she will not be a danger to the community. As a result, he insists that the appropriate standard of review for a denial of a petition brought under section 1026.2 is substantial evidence, not abuse of discretion.

Knowles acknowledges that some appellate courts have applied the abuse of discretion standard of review to decisions involving section 1026.2. (See *People v. Bartsch* (2008) 167 Cal.App.4th 896, 900; *Dobson*, *supra*, 161 Cal.App.4th at p. 1433.) *Bartsch* and *Dobson*, however, relied on *Sword* and *Cross*, two cases that involved the distinct method of obtaining outpatient status under section 1600 et seq. (*Sword, supra*, 29 Cal.App.4th at p. 619, fn. 2; *Cross*, *supra*, 127 Cal.App.4th at p. 66.)

Regardless, we find that our conclusion in this case would be the same under either standard of review. In analogous situations, appellate courts have held that " '[t]he practical differences' between the abuse of discretion and substantial evidence standards

of review 'are not significant.' " (See *People v. Gregerson* (2011) 202 Cal.App.4th 306, 319 [examining order denying conditional release to a mentally disordered offender].) Under the substantial evidence standard, we review the entire record, drawing all reasonable inferences in favor of the trial court's finding, without making credibility decisions or reweighing evidence, and determine if substantial evidence supports the trial court's ruling. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) And under the abuse of discretion standard, we must defer to the trial court's ruling unless it exceeds the bounds of all reason. (*Cross, supra,* 127 Cal.App.4th at p. 73.) If substantial evidence does not support the trial court's factual findings, it has abused its discretion.

2. *Discussion*

The trial court denied defendant's petition under section 1026.2 after it determined that he would be "a danger to the health and safety of others due to mental defect, disease, or disorder, while under supervision and treatment in the community." (§ 1026.2, subd. (e).) Knowles argues that insufficient evidence supports this determination. We disagree. Based on the record, this determination is supported by substantial evidence, demonstrating that the trial court did not act arbitrarily or capriciously when it denied Knowles's petition.

During the hearing, Dr. Steward opined that Knowles's belief that he did not have a paranoid delusional disorder, combined with a decrease in inhibitions from his history of illicit drug use, resulted in a decrease in his ability to make good judgments and curb his behavior. Dr. Steward further opined that he believed Knowles had become more paranoid following his decision to stop medication.

Dr. Steward's concerns were echoed by Piedade. According to Piedade, Knowles could not identify any risk factors for reoffending and could not identify any potential triggers for relapse or substance abuse. Piedade also described Knowles as more guarded during their second interview. Piedade asked Knowles about the murder he had

committed, and he said he could not recall the details of the offense and referred her to the police report. As the trial court observed, Knowles's demeanor in the second interview reflected a lack of progress and insight. And the lack of insight into his mental health is evidence of Knowles's dangerousness.

Knowles's own testimony reflected that he would be a danger to others if released into the community. His statements during the hearing demonstrate a failure to understand his own mental condition and how his mental condition may impact his level of dangerousness. Knowles testified that he did not believe he had a mental disorder and did not think he needed medication. He denied committing murder. He also admitted to using illicit drugs in the past but said he did not believe his drug use made him dangerous. Likewise, he testified that he did not believe his alcohol use made him dangerous. Although Knowles said that he would follow guidelines and supervision requirements, including abstinence from drugs and alcohol, if required by CONREP, the trial court could reasonably view these statements as lacking credibility given Knowles's stated beliefs.

Knowles argues that the trial court appeared to be "especially influenced" by his criminal history and the violent nature of his commitment offense. Knowles argues that this was improper because his past criminal conduct does not reflect his *current* mental state, which is what is subject to review in a section 1026.2 hearing. Based on our review of the record, we believe Knowles mischaracterizes the trial court's statements. The trial court commented that it was Knowles's lack of insight into the commitment offense—not the murder itself—that demonstrated he was a danger to society. The court stated that Knowles's behavior was not consistent with someone who had taken responsibility and was taking steps to ensure such behaviors would not resurface.

Knowles minimizes some of the evidence that was introduced at trial. He insists that his records from Napa State Hospital reflect only a few minor incidents, none of

which demonstrate that he was violent when he was hospitalized. He also claims that the medical records reflect that his refusal to take medication did not cause him to become violent. Knowles's argument, however, simply invites us to reweigh the evidence and conclude that since *some* of the evidence adduced at the hearing does not support the trial court's determination, the determination was not sufficiently supported by the record. That is not the function of the appellate court. (See *People v. Maury* (2003) 30 Cal.4th 342, 403 [reviewing court does not reweigh evidence or reassess credibility].) The trial court's conclusion that Knowles is a danger to the community is sufficiently supported by evidence in the record, including Knowles's own testimony, Dr. Steward's testimony, and Piedade's testimony. The fact that some evidence in the record may support a contrary finding does not render the trial court's decision erroneous.

Knowles, however, claims that he met his burden to demonstrate that he is able to control his behavior, and the prosecutor did not provide any evidence to rebut this finding. Knowles insists that due process limits " 'involuntary civil confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control.' " (*In re Howard N.* (2005) 35 Cal.4th 117, 128 (*Howard N.*), quoting *Kansas v. Hendricks* (1997) 521 U.S. 346, 358 (*Kansas*).)

Knowles's reliance on *Howard N.* and *Kansas* is misplaced. Both of these cases involve involuntary civil commitments. (*Howard N.*, *supra*, 35 Cal.4th at p. 122 [involuntary commitment of person under Welf. & Inst. Code, § 1800 et seq.]; *Kansas*, *supra*, 521 U.S. at p. 358 [involuntary commitment of persons under Kansas's Sexually Violent Predator Act].) Defendants committed under section 1026.2 are distinctly different than those who are involuntarily committed under other statutory schemes. Those committed under section 1026.2 *voluntarily* pleaded not guilty by reason of insanity to a crime and are committed on that basis. "Insanity acquittees 'themselves have raised the issue of their legal insanity as a defense in criminal proceedings'

[citation] so that there is 'diminished concerns as to the risk of error.' [Citation.] Moreover, insanity acquittees [have] 'demonstrated dangerousness by committing a criminal offense. . . . [T]here has been an adjudication that [they] committed a criminal act and [were] legally insane when [they] did so.' " (*People v. Beck* (1996) 47 Cal.App.4th 1676, 1686.)

There is also no express statutory requirement that commitments under section 1026.2 must be limited to those who cannot control their behaviors. As written, section 1026.2 does not contain *any* reference to a defendant's ability to control his or her behavior.

Furthermore, insanity acquittees that are committed to state hospitals are presumed to be mentally ill and dangerous during their confinement, and it is a defendant's burden to prove by preponderance of the evidence that he or she is no longer mentally ill or dangerous. (*Sword*, *supra*, 29 Cal.App.4th at p. 624; § 1026.2, subd. (k).) As a result, even if we assume that a defendant's ability to control his or her behavior is a necessary prerequisite, such a finding should be *implied* in Knowles's case and it is *Knowles*'*s* burden—not the prosecutor's—to demonstrate by a preponderance of the evidence that he has the ability to control his behavior. And substantial evidence would support an implied finding that Knowles did not meet his burden. As previously stated, Dr. Steward and Piedade's testimony provided evidence, which the trial court credited, that Knowles lacked insight into his mental condition and was not making an appropriate amount of progress. Knowles's own testimony reflected a lack awareness about the way his substance abuse and mental health condition may impact his behavior. Knowles's argument that the incidents described in his records from Napa State Hospital—such as when he raised his voice with a staff member and believed he was kicked by his peer—proves that he will not respond violently or dangerously if released into society merely

asks us to reweigh the evidence, which we do not do on appeal. (See *People v. Maury*, *supra*, 30 Cal.4th at p. 403.)

Knowles also argues that Dr. Steward's opinions are speculative and cannot constitute substantial evidence. For example, Dr. Steward opined that Knowles's paranoia, combined with his history of drug abuse, would render him dangerous. Knowles, however, insists that the records from Napa State Hospital do not indicate that he suffered from paranoia and there was no evidence that Knowles was interested in taking illicit drugs. In fact, Knowles points out that he has been in substance abuse treatment since his hospitalization and has never been found with illicit drugs. Dr. Steward, however, based his testimony on his personal observations with Knowles and his review of Knowles's records. Based on his evaluation, Dr. Steward believed that Knowles's paranoia had increased since December 2016, when he stopped taking psychotropic medication. Dr. Steward's assessment of Knowles's inability to abstain from substances also stemmed from his expert opinion, based in part on his personal interactions with Knowles, that Knowles's level of insight had decreased. His opinions were not speculative.

Lastly, Knowles argues that the proper question before the trial court was not whether he would be dangerous in the future but whether he was *currently* dangerous. (See *Foucha v. Louisiana* (1992) 504 U.S. 71, 78 [improper to keep defendant against will in mental institution absent determination of "current mental illness and dangerousness"].) Therefore, he insists that his behavior under future changes are immaterial and should not be considered by the trial court.

To support his argument, Knowles relies on *People v. Williams* (1988) 198 Cal.App.3d 1476 (*Williams*). In *Williams*, the defendant, who was on outpatient status under section 1026.2, applied to be released from commitment in a second-stage sanity restoration proceeding. (*Williams, supra*, at p. 1478.) Over the defendant's objection,

the trial court instructed the jury that when making its determination on the defendant's sanity, it " 'must disregard what effect any medication prescribed for the defendant's mental condition might have on his behavior' " and its decision " 'should focus only on whether or not the defendant, in an unmedicated condition, by reason of some mental disease, defect or disorder, represents a danger to the health and safety of himself or others.' " (*Id*. at p. 1479.) The trial court also refused to instruct the jury with the defendant's requested instruction, which stated that the jury was solely meant to decide whether the defendant " 'in his present medicated condition represents a danger to himself or others' " and, in order to have his sanity restored while in a medicated state, that the jury must find by a preponderance of the evidence that he would continue to take his prescribed medication in an unsupervised environment. (*Ibid*.)

The appellate court concluded that the given instruction was erroneous, holding that "[a]n individual's present condition is the focus of a commitment proceeding, not his or her behavior under future changes." (*Williams*, *supra*, 198 Cal.App.3d at p. 1481.) The appellate court also observed that approving similar jury instructions would arguably result in individuals who suffer from mental illness "languishing indefinitely in mental hospitals or as outpatients because of their reluctance to rely on prescription medication, an impediment to their complete freedom." (*Id*. at p. 1482.)

Knowles's reliance on *Williams* is misplaced. *Williams* does not stand for the proposition that the trial court cannot consider any risk of future dangerousness. In fact, *Williams* itself contemplated that the jury in a second-stage sanity proceeding *should* consider a defendant's future behavior. Referring back to the defendant's requested jury instruction, which the trial court declined to give to the jury, the appellate court observed that the instruction "was framed to reflect [the defendant's] previous conduct while on medication [to allow] the jury to decide the threshold question whether [the defendant] *would continue* to take his prescribed medication in an unsupervised environment and if

so, whether in his medicated condition he represented a danger to himself or others." (*Williams, supra,* 198 Cal.App.3d at pp. 1481-1482, italics added.)

Furthermore, the statutory scheme itself requires that the trial court consider future conduct. Before granting a petition for outpatient supervision under section 1026.2, the trial court must find that "the applicant will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, *while under supervision and treatment in the community*." (§ 1026.2, subd. (e), italics added.) A consideration of whether a defendant will be dangerous while under supervision and treatment in the community requires an evaluation of a defendant's future conduct.

In his reply brief, Knowles argues that *Williams* supports his argument because it stands for the proposition that a risk of future harm must be grounded to a defendant's current condition. Knowles maintains that Dr. Steward's concern over his risk of future relapse is purely speculative. As previously explained, we disagree. Knowles himself admitted to using illicit drugs in the past but said he did not believe the use of drugs made him dangerous. Knowles also testified that he did not believe the use of alcohol made him dangerous. Citing Knowles's lack of insight, Dr. Steward opined that Knowles was at risk of succumbing to alcohol or drugs. This was not speculation, it was an expert opinion based on the evidence.

Based on the record, we conclude that the trial court did not err when it denied Knowles's petition for release to a supervised outpatient program.

DISPOSITION

The order denying Knowles's petition for conditional release is affirmed.

Premo, J.

WE CONCUR:

Greenwood, P.J.

Elia, J.

People v. Knowles
H045494